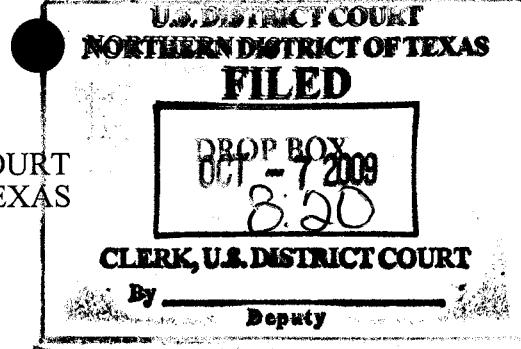


CTJ/RMT  
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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

YAHOO! INC. and OVERTURE SERVICES,  
INC. d/b/a YAHOO! SEARCH  
MARKETING,

Defendants.

Case No. 4:08-CV-626-A

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Yahoo! Inc. and Overture Services, Inc., d/b/a Yahoo! Search Marketing (together, "Yahoo!"), move for summary judgment and pursuant to Local Rule 56.3 state as follows:

**I.  
SUMMARY**

Plaintiff American Airlines, Inc. ("American"), asserted 11 causes of action in its First Amended Complaint. Yahoo! moves for summary judgment on all 11 causes of action: (1) Direct Infringement under the Lanham Act; (2) Indirect Infringement under the Lanham Act; (3) Vicarious Trademark Infringement under the Lanham Act; (4) False Representations under the Lanham Act; (5) Dilution under the Lanham Act; (6) Trademark Infringement under Texas law; (7) Trademark Dilution under Texas law; (8) Unfair Competition under Texas law; (9) Misappropriation under Texas law; (10) Tortious Interference of an Existing Contract under Texas law; and (11) Money had and Received under Texas law. Yahoo! more specifically identifies in its brief each element of each claim on which it seeks summary judgment.

Yahoo! also moves for summary judgment on its affirmative defenses that: (1) American's claims are barred by the doctrine of nominative fair use; (2) Yahoo!'s conduct is protected by the Lanham Act's Safe Harbor; and, (3) American acquiesced in the keyword bidding practices of its marketing partners. Yahoo! more particularly describes in its brief each of the affirmative defenses on which it seeks summary judgment.

Finally, Yahoo! also moves for summary judgment on the ground that American's lost profits claim fails for lack of causation and relies on assumptions that are factually unsupported.

**II.**  
**LEGAL AND FACTUAL GROUNDS ON WHICH YAHOO! RELIES**

The legal and factual grounds on which Yahoo! relies are set forth in detail in Yahoo!'s brief.

**III.**  
**APPENDIX**

Yahoo!'s motion and brief are supported and accompanied by an appendix containing the evidence on which Yahoo! relies. The brief cites to the appendix for each assertion made by Yahoo! concerning the evidence that supports summary judgment.

**IV,**  
**PRAYER**

Yahoo! respectfully requests that the Court grant summary judgment in Yahoo!'s favor.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on Defendants' counsel, as indicated below, on the 7 day of October 2009:

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